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David D Lowry  
Brown Rudnick Freed & Gesmer P C  
Box IP 18th Floor  
One Financial Center  
Boston, MA 02111

EXAMINER

BELIVEAU, SCOTT E

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/545,015

Applicant(s)

HABERMAN ET AL.

Examiner

Scott Beliveau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12 August 2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Miscellaneous***

1. Please note that the examiner of record for the prosecution of this application has changed.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 12 August 2003 was filed after the mailing date of the Non-Final Rejection on 27 February 2003. The record is unclear as to whether or not the IDS had been previously considered. As the submission was in compliance with the provisions of 37 CFR 1.97, the examiner has considered the information disclosure statement.

### ***Response to Amendment***

3. Applicant's arguments with respect to claims 1, 10, and 13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the limitation "said message" (claim 10, line 4 and

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claim 13, line 5) lacks proper antecedent basis to an earlier recitation of a message template or a personalized message. For the purpose of art evaluation, the examiner shall presume that the limitation is referencing the message template.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawler (US Pat No. 5,758,259).

In consideration of claim 1, Figure 1 of the Lawler et al. reference illustrates a “system for dynamically constructing a personalized message for an intended audience” wherein the “personalized message” is delivered in connection with a “message campaign” designed to provide the groups of users with a message or program listings (EPG) that have been customized in order to reduce the amount of programming information that a viewer must consider to identify appropriate programming selections. Such a listing of programs are arguably construed as advertisements for those programs in the sense that the presentation of the times/titles of the programs as illustrated in Figure 3B serve to increase the user’s awareness as to the existence of those particular programs. However, it is noted that no special definition is set forth in the specification with respect to the meaning of a “message campaign” such that it need be limited to advertising as opposed to any form of message that

is designed to convey the desires of the message creator or provider (IA: Page 10, Lines 4-8).

As illustrated in Figures 3A, the “message campaign” includes a “message template” [80] which “defines a framework for constructing said personalized message” (Figure 3B) and “comprises a plurality of media segment slots constituting said personalized message, wherein at least one media segment slot overlaps another media segment slot” [88] on a criteria [82] and temporal basis or based upon the illustration wherein the end of one segment is illustrated as being the start of the next segment. The system further comprises a “plurality of media segments” corresponding to video programs wherein “each media segment [is] selectable for a particular one of said media segment slots of said message template” as illustrated in Figure 3B) and “several of said media segments are selectable for a same one of said media segments slots of said message template” given that depending upon a user’s preferences any of the available programming could have been selected for a given time slot. The “message campaign” also includes a “message assembly component” [12] that is “responsive to user profile data of said intended audience” (Figure 5; Col 9, Lines 36-49) and “configured to apply . . . [a] plurality of expert rules to said user profile data” (Figure 6; Col 9, Line 50 – Col 10, Line 29) “in order to select appropriate media segments for each of said media segment slots of said message template, in order to assemble said personalized message for said intended audience” for subsequent display as a personalized program listings. The “expert rules” as applied to Lawler et al. are the rules which decide which media segments or programs to include within the guide and may include rules such as the use of a sum-of-counts to determine favorites, the usage of tie-breaker criteria, and the

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usage/determination of related profiles should insufficient information be available to make a decision.

Claim 2 is rejected wherein the “intended audience has no direct control over said framework for said personalized message” given that the particular framework is developed and defined by the service provider (ex. the user has no control over how particular elements are arranged within the display).

Claim 3 is rejected wherein the “message assembly component also uses . . . temporal information in order to select appropriate media segments for assembling said personalized message” given that the personalized information is specific to a selected time period of programming (Col 9, Line 50 – Col 10, Line 5).

Claim 4 is rejected wherein the “media segments are selected from the group including audio [and] video . . . “ associated with the distributed television programming.

Claim 5 is rejected wherein as illustrated in Figure 3B “several of said media segments which corresponded to a same one of said media segment slots of said message template are of different lengths and [the] message template appropriately adjusts said personalized message based on a length of a selected one of said media segments”. For example, the program “Kung Fu” is 1 hour long and “Trailside” is ½ hour long meeting the limitation of the segments being of different lengths. The template is subsequently adjusted so as to accommodate the appropriate length such that the program “Kung Fu” is displayed as extending over two ½ hours slots. Alternatively, the template is adjusted for the program “Babylon 5” so as to indicate that its length extends beyond the illustrated grid.

Claim 6 is rejected wherein the “personalized message is assembled immediately before presentation to said intended audience” in conjunction with the generation/rendering of the personalized message or program guide on the display screen responsive to the user input (Col 4, Lines 17-43; Col 4, Lines 65 – Col 5, Lines 7).

Claim 7 is rejected wherein the “user profile data of said intended audience is obtained from a plurality of user information data sources” including the user him/herself as well as other members of the household.

Claim 8 is rejected wherein the “message campaign includes a target entity profile” (ex. Personal or Household) corresponding to the user requesting the personalized program listings wherein the “target entity profile provides an indication of appropriate media segments for selected user profile data” (Table 2). For example, the person prefers segments with Team – Boston Red Sox over Team – Toronto Blue Jays.

Claim 9 is rejected the “target entity profile provides an indication for selecting said intended audience from said user information data source” given that the user’s individual profile is identified by a viewer identifier and PIN combination (Col 7, Lines 36-43).

Claim 10 is rejected as previously set forth in the rejection of claim 1 wherein the “system” (Figure 1) of Lawler is operable to implement a “method for dynamically constructing a personalized message for an intended audience” such as a “message” comprising personalized program listings. The method comprises “obtaining user profile data for said intended audience” (Figure 5) and “selecting a message template” defining the layout of the “message” or program guide which “defines a framework for constructing said personalized message and includes a plurality of media segments slots constituting said

personalized message, wherein at least one media segment slot overlaps another media segment slot” (Figures 3A-B). The system “applies a plurality of expert rules to said user profile data and said message template, in order to select from a plurality of media segment appropriate media segments for insertion into said plurality of media segment slots in said message template” (Figure 6). The subscriber terminal [20] subsequently, “assembles said personalized message using said message template and said selected media segments” and “provides said assembled personalized message in a format for delivery to said intended audience” [18] as shown in Figures 3A-B.

Claim 11 is rejected as previously set forth wherein the “message template and plurality of message segments are created as part of a message campaign” to deliver and present programming of interest to the user.

Claim 12 is rejected wherein the “steps of assembling . . . and providing said assembled personalized message is performed immediately before delivery to said intended audience” in conjunction with the generation/rendering of the personalized message or program guide on the display screen responsive to the user input (Col 4, Lines 17-43; Col 4, Lines 65 – Col 5, Lines 7).

Claim 13 is rejected in light of the rejection of claims 1 and 13 wherein the Lawler “system” (Figure 1) is operable to implement a “method for dynamically constructing a personalized message for an intended audience” such as a “message” comprising personalized program listings. The method comprises “obtaining user profile data for said intended audience” (Figure 5) and “creating a plurality of media segments, including video segments and audio segments” corresponding to television programming to be subsequently



distributed to subscribers. The service provider [12] or some other entity “creates a message template” associated with the layout of the electronic program guide which “defines a framework for constructing said personalized message and includes a plurality of media segments slots constituting said personalized message, wherein at least one media segment slot overlaps another media segment slot” (Figures 3A-B). The system “applies a plurality of expert rules to said user profile data and said message template, in order to select from a plurality of media segments appropriate media segments for insertion into said plurality of media segment slots in said message template” (Figure 6). The subscriber terminal [20], in response to a user request, “assembles said personalized message using said message template and said selected media segments” and “provides said assembled personalized message in a format for delivery to said intended audience” [18] as shown in Figures 3A-B.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Lumley et al. (US Pat No. 6,588,013) reference discloses a video promotion system which distributes expert rules as to the selection of advertisements through templates (Col 10, Lines 34-46)
- The Long et al. (US Pub No. 2002/0026359) reference discloses a method of targeting advertising wherein the advertiser utilizes templates.

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- The Bar-El (WO 99/26415) discloses a technique for inserting personalized advertisements into a video stream.
- The Lawler et al. (US Pat No. 5,585,838) reference provides a further illustration of the Program Time Guide set forth in the grounds of rejection.
- The Nishi (US Pat No. 6,681,395) reference discloses a system and method for the creation/selection and distribution of program guide templates.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB  
June 3, 2005



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600